IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6288 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PAPPU @ KOTHI VISHWANATHSINH RAJPUT (THAKUR)

Versus

STATE OF GUJARAT

Appearance: MS KRISHNA U MISHRA for the Petitioner.
Ms.Archana Raval, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 5.3.2004, by which he is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner is also served with the grounds of detention.

In the aforesaid grounds, there is a reference about three pending cases against the petitioner, which

are registered under the Bombay Prohibition Act. The Authority, after considering the said cases, have detained him under PASA. The Authority has not recorded statements of witnesses. It is the aforesaid order which is impugned in this petition.

The learned Advocate for the petitioner submitted that the petitioner, at the relevant time, was in judicial custody so far as the case at serial No.3 is concerned.

The detaining authority came to the conclusion that the detenu will continue the said activities again after he is released on bail. However, no particulars have been given for coming to the conclusion that even in connection with the case at serial No.3, the petitioner will be released on bail. It is submitted by the learned Advocate for the petitioner that, normally, when the petitioner is found to be repeating the offences, such bail orders are not granted as a matter of course. To substantiate her say on this aspect, she has relied upon the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675, wherein the Apex Court held as under ;-

" ... ...

4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

xxx xxx xxx

6. The requirement as noticed above in Binod

Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

Considering the aforesaid aspect that the authority has not stated as to on what basis it has reached the subjective satisfaction that the petitioner will be released on bail in connection with the case at serial No.3 on submitting application for bail, this petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

At this stage, learned Advocate for the petitioner submitted that the petitioner will not enter the Amraiwadi Police Station area upto 30th November, 2004. This statement is recorded. It is for the Police Authority to monitor the same.

(P.B. Majmudar, J.)

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(apj)